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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Edward J. Gladney,

9 Plaintiff,

10 vs.

11 The United States of America,

12 Defendants.  
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No. CV-17-427-TUC-DCB

**ORDER**

15 Defendant, the United States, has filed a Motion to Dismiss or in the Alternative  
16 Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil  
17 Procedure.

18 **NOTICE -- WARNING TO PLAINTIFF**

19 **THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU BY THE COURT<sup>1</sup>**

20 Defendants' motions seek to have your case dismissed. Either dispositive motion, if  
21 granted, will end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary  
23 judgment. Generally, summary judgment must be granted when there is no genuine issue  
24 of material fact – that is, if there is no real dispute about any fact that would affect the result  
25 of your case, the party who asked for summary judgment is entitled to judgment as a matter  
26 of law, which will end your case. [In the exhaustion context, if Defendants produce  
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28 <sup>1</sup> *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (*en banc*); *Albino v. Baca*, ---  
F.3d ----, 2014 WL 1317141, at \*1 (9th Cir. April 3, 2014).

1 admissible evidence demonstrating that you failed to exhaust available administrative  
2 remedies, your complaint will be dismissed without prejudice unless your response to  
3 Defendants' Motion includes admissible evidence sufficient to show that you exhausted all  
4 available administrative remedies or that no administrative remedies were available to you.  
5 Types of admissible evidence may include copies of your grievances, grievance responses,  
6 and sworn declarations.]

7 When a party you are suing makes a motion for summary judgment that is properly  
8 supported by declarations (or other sworn testimony), you cannot simply rely on what your  
9 complaint says. Instead, you must set out specific facts in declarations, depositions,  
10 answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that  
11 contradict the facts shown in the Defendant(s)'s declarations and documents and show  
12 that there is a genuine issue of material fact for trial. If you do not submit your own  
13 evidence in opposition, summary judgment, if appropriate, may be entered against you. If  
14 summary judgment is granted, your case will be dismissed and there will be no trial.

15 Rule 56.1(b) of the Local Rules of Civil Procedure ("LRCiv"), Rules of Practice of  
16 the U.S. District Court for the District of Arizona, also requires that you include with your  
17 response to the Motion for Summary Judgment a separate statement of facts in opposition  
18 to the Motion for Summary Judgment. Your separate statement of facts must include  
19 numbered paragraphs corresponding to the Defendant('s/s') ("moving party") separate  
20 statement of facts:

21 (b) Any party opposing a motion for summary judgment shall  
22 file a statement, separate from that party's memorandum of  
23 law, setting forth: (1) for each paragraph of the moving party's  
24 separate statement of facts, a correspondingly numbered  
25 paragraph indicating whether the party disputes the statement  
26 of fact set forth in that paragraph and a reference to the specific  
27 admissible portion of the record supporting the party's position  
28 [for example, affidavit, deposition, discovery response, etc.] if  
the fact is disputed; and (2) any additional facts that establish  
a genuine issue of material fact or otherwise preclude judgment  
in favor of the moving party. Each additional fact shall be set  
forth in a separately numbered paragraph and shall refer to a  
specific admissible portion of the record where the fact finds  
support.

1 LRCiv 56.1(b). You must also cite to the specific paragraph in your statement of facts that  
2 supports any factual claims you make in your memorandum of law:

3 (e) Memoranda of law filed in support of or in opposition to a  
4 motion for summary judgment, including reply memoranda,  
5 shall include citations to the specific paragraph in the statement  
6 of facts that supports factual assertions made in the  
7 memoranda.

8 LRCiv 56.1(e).

9 Additionally, LRCiv 7.2(e)(1) provides:

10 Unless otherwise permitted by the Court, a motion including  
11 its supporting memorandum, and the response including its  
12 supporting memorandum, may not exceed seventeen (17)  
13 pages, exclusive of attachments and any required statement of  
14 facts.

15 Finally, LRCiv 7.2(i) provides:

16 If a motion does not conform in all substantial respects with  
17 the requirements of this Local Rule, or if the unrepresented  
18 party or counsel does not serve and file the required answering  
19 memoranda, or if the unrepresented party or counsel fails to  
20 appear at the time and place assigned for oral argument, such  
21 non-compliance may be deemed a consent to the denial or  
22 granting of the motion and the Court may dispose of the motion  
23 summarily.

24 **You must timely respond to all motions. The Court may, in its discretion, treat**  
25 **your failure to respond to these dispositive motions as consent to the granting of that**  
26 **motion without further notice, and judgment may be entered dismissing this action**  
27 **with prejudice pursuant to LRCiv 7.2(i). See *Brydges v. Lewis*, 18 F.3d 651 (9th Cir.**  
28 **1994) (*per curiam*).**

**Accordingly,**

**IT IS ORDERED** that the Defendant's Motion for Leave to File (Doc. 100) the  
motion in excess of the page limit for dispositive motions is GRANTED. The Clerk of the  
Court shall file the lodged motion (Doc. 101) into the record.

**IT IS FURTHER ORDERED** that the Defendant's Motion to Seal (Doc. 103)

1 certain attachments to the Statement of Facts is GRANTED. The Clerk of the Court shall  
2 file the lodged attachments (Doc. 104) into the record UNDER SEAL.


3 **IT IS THEREFORE ORDERED** that Plaintiff must file the Response to  
4 Defendant's Motion for Summary Judgment, together with a separate Statement of Facts  
5 and supporting affidavits or other appropriate exhibits, no later than **July 6, 2019**. Plaintiff  
6 may file the Reply in support of his Motion for Summary Judgment in combination with  
7 the Response or file the Reply separately. The Reply shall be due no later than **July 6,**  
8 **2019.**

9 **IT IS FURTHER ORDERED** that the Defendant may file a Reply in support of  
10 its Motion for Summary Judgment within fifteen (15) days after service of Plaintiff's  
11 response.

12 **IT IS FURTHER ORDERED** that the dispositive motions will be deemed ready  
13 for decision without oral argument on the day following the date set for filing a reply unless  
14 otherwise ordered by the Court.

15 Dated this 30th day of May, 2019.

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Honorable David C. Bury  
United States District Judge